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Attorneys for Plaintiff, NEMAN BROTHERS & ASSOC., INC.

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

NEMAN BROTHERS & ASSOC., INC., a
California Corporation;

Plaintiff,

VS.

NOVELLE MODE, INC., a California corporation d/b/a FREE KISSES; EUN S. KIM, an individual; ROSS STORES, INC. d/b/a DD'S DISCOUNTS, a Delaware Corporation; and DOES 1-10, inclusive,

Defendants.

Case Number: 2:17-cv-4618

PLAINTIFF'S COMPLAINT FOR:

- 1. COPYRIGHT INFRINGEMENT**
 - 2. VICARIOUS COPYRIGHT INFRINGEMENT**
 - 3. CONTRIBUTORY COPYRIGHT INFRINGEMENT**

Jury Trial Demanded

Plaintiff NEMAN BROTHERS & ASSOC., INC. (“Plaintiff” or “NEMAN”) by and through its undersigned attorneys, hereby prays to this honorable Court for relief and remedy based on the following:

1
2 **INTRODUCTION**

3 Plaintiff is a California-based company engaged in the apparel industry as a textile converter of
4 imported and domestic fabrications. Plaintiff creates, or purchases and obtains, exclusive rights
5 to unique two-dimensional graphic artworks for use on textiles and garments, and those textiles
6 and garments are transacted primarily in the fashion industry. Plaintiff owns these designs in
7 exclusivity and makes sales of products bearing these designs for profit. Plaintiff's business is
8 predicated on its ownership of these designs and it spends a considerable amount of time and
9 resources creating and obtaining top-quality, marketable and aesthetically-appealing designs.
10 Customers of Plaintiff, including possibly DOE defendants named herein, take design samples
11 with the understanding and agreement that they will only utilize Plaintiff to reproduce said
12 designs should they wish to do so, and will not seek to make minor changes to Plaintiff's
13 proprietary work to reproduce the same elsewhere, yet use those designs in furtherance of their
14 business in violation of both their contractual agreement with Plaintiff and Plaintiff's copyrights.
15 No other party is authorized to make sales of product bearing Plaintiff's proprietary designs
16 without express permission from Plaintiff. This action is brought to recover damages for direct,
17 vicarious and contributory copyright infringement arising out of the misappropriation of
18 Plaintiff's exclusive designs by the Defendants, and each of them.

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20 **JURISDICTION AND VENUE**

- 21 1. This action arises under the Copyright Act of 1976, Title 17 U.S.C. § 101 *et seq.*
22 2. This Court has federal question jurisdiction under 28 U.S.C. §§ 1331, 1338(a) and (b).
23 3. Venue in this judicial district is proper under 28 U.S.C. §§ 1391(c) and 1400(a) in that this is
24 the judicial district in which a substantial part of the acts and omissions giving rise to the
25 claims occurred.

PARTIES

4. NEMAN BROTHERS & ASSOC., INC. (“Plaintiff”) is a corporation organized and existing under the laws of the State of California with its principal place of business in the County of Los Angeles, at 1525 S Broadway St., Los Angeles, CA 90015.
 5. Plaintiff is informed and believes and thereon alleges that Defendant NOVELLE MODE, INC. d/b/a FREE KISSES (“NOVELLE MODE”), is, and at all times herein mentioned was, a corporation organized and existing under the laws of California and doing business in California, with its principal place of business at 1363 Elwood St., Los Angeles, CA 90021.
 6. Plaintiff is informed and believes and thereon alleges that Defendant EUN S. KIM (“KIM”), is, and at all times herein mentioned was, an individual residing in Los Angeles, California. Plaintiff is informed and believes and thereon alleges that Defendant KIM is, and at all times herein mentioned was, the owner and principal of NOVELLE MODE, INC. d/b/a FREE KISSES with its principal place of business at 1363 Elwood St., Los Angeles, CA 90021.
 7. Plaintiff is informed and believes and thereon alleges that Defendant ROSS STORES, INC. d/b/a DD’S DISCOUNTS, (“ROSS STORES”), is, and at all times herein mentioned was, a corporation organized and existing under the laws of Delaware and doing business in California, with its principal place of business at 5130 Hacienda Drive, Dublin, California 94568.
 8. Named Defendants, and Does 1-10, may be collectively referred to as “Defendants.”
 9. Plaintiff is informed and believes and thereon alleges that some of Defendants Does 1 through 3, inclusive, are manufacturers and/or vendors of garments to Defendant, which DOE Defendants have manufactured and/or supplied and are manufacturing and/or supplying garments comprised of fabric printed with Plaintiff’s copyrighted design(s) (as hereinafter defined) without Plaintiff’s knowledge or consent or have contributed to said infringement. The true names, whether corporate, individual or otherwise, and capacities of defendants sued herein as Does 1 through 3 are presently unknown to Plaintiff at this time, and therefore, Plaintiff sues said defendants by such fictitious names. Plaintiff will seek leave to amend this complaint to allege their true names and capacities when the same have been ascertained.

1 Plaintiff is informed and believes, and based thereon alleges, that each of defendants
2 designated as a DOE is responsible in some manner for the events alleged herein and the
3 damages caused thereby.

4 10. Defendants DOES 4 through 10, inclusive, are other parties not yet identified who have
5 infringed Plaintiff's copyrights, have contributed to the infringement of Plaintiff's
6 copyrights, or have engaged in one or more of the wrongful practices alleged herein. The true
7 names, whether corporate, individual or otherwise, and capacities of defendants sued herein
8 as Does 4 through 10 are presently unknown to Plaintiff at this time, and therefore, Plaintiff
9 sues said defendants by such fictitious names. Plaintiff will seek leave to amend this
10 complaint to allege their true names and capacities when the same have been ascertained.

11 11. Plaintiff is informed and believes and thereupon alleges that at all times relevant hereto each
12 of Defendants acted in concert with each other, was the agent, affiliate, officer, director,
13 manager, principal, alter-ego, and/or employee of the remaining defendants and was at all
14 times acting within the scope of such agency, affiliation, alter-ego relationship and/or
15 employment; and actively participated in or subsequently ratified and adopted, or both, each
16 and all of the acts or conducts alleged, with full knowledge of all the facts and circumstances,
17 including without limitation to full knowledge of each and every wrongful conducts and
18 Plaintiff's damages caused therefrom.

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20 **CLAIMS RELATED TO DESIGN**

21 12. Plaintiff is the owner and author of a two-dimensional artwork called NB101122, under title
22 HI-SUMMER PRINTS/STUDIO ARTWORK 2010 ("Subject Design"). (Exhibit A).

23 13. Plaintiff applied for a copyright from the United States Copyright Office for the Subject
24 Design and was granted Registration No. VAu 1-055-835 effective on November 15, 2010.
25 (Exhibit B).

26 14. Plaintiff formatted the Subject Design for use on textiles, sampled the Subject Design, and
27 negotiated sales of fabric bearing the Subject Design.

1 15. Plaintiff is informed and believes and thereon alleges that Defendants, each of them, had
2 access to the Subject Designs, including without limitation, through: (a) access to Plaintiff's
3 showroom and/or design library; (b) access to illegally distributed copies of the Subject
4 Designs by third-party vendors and/or DOE Defendants, including without limitation
5 international and/or overseas converters and printing mills; (c) access to Plaintiff's strike-offs
6 and samples; and (d) access to garments in the marketplace manufactured with lawfully
7 printed fabric bearing the Subject Designs.

8 16. Plaintiff is informed and believes and thereon alleges that, without Plaintiff's authorization,
9 Defendant NOVELLE MODE purchased, sold, marketed, advertised, manufactured, caused
10 to be manufactured, imported and/or distributed fabric and/or garments comprised of fabric
11 featuring a design which is identical, or substantially similar to, the Subject Design. A true
12 and correct copy of such a garment is attached hereto as Exhibit C. Said garments include
13 but are not limited to garments sold by NOVELLE MODE bearing the label "FREE
14 KISSES".

15 17. At various times Defendant NOVELLE MODE owned and controlled offline and/or online
16 retail stores, and each, Plaintiff's investigation revealed that garments comprised of fabric
17 bearing the Subject Design were being offered for sale, garments which were manufactured
18 and/or imported under the direction of the Defendants, and each of them.

19 18. Plaintiff is informed and believes and thereon alleges that, without Plaintiff's authorization,
20 Defendant KIM purchased, sold, marketed, advertised, manufactured, caused to be
21 manufactured, imported and/or distributed fabric and/or garments comprised of fabric
22 featuring a design which is identical, or substantially similar to, the Subject Design. A true
23 and correct copy of such a garment is attached hereto as Exhibit C. Said garments include
24 but are not limited to garments sold by KIM bearing the label "FREE KISSES".

25 19. At various times Defendant KIM owned and controlled offline and/or online retail stores, and
26 each, Plaintiff's investigation revealed that garments comprised of fabric bearing the Subject
27 Design were being offered for sale, garments which were manufactured and/or imported
28 under the direction of the Defendants, and each of them.

- 1 20. Plaintiff is informed and believes and thereon alleges that, without Plaintiff's authorization,
2 Defendant ROSS STORES purchased, sold, marketed, advertised, manufactured, caused to
3 be manufactured, imported and/or distributed fabric and/or garments comprised of fabric
4 featuring a design which is identical, or substantially similar to, the Subject Design. A true
5 and correct copy of such a garment is attached hereto as Exhibit C. Said garments include
6 but are not limited to garments sold by ROSS STORES bearing the label "FREE KISSES".
7 21. At various times Defendant ROSS STORES owned and controlled offline and/or online retail
8 stores, and each, Plaintiff's investigation revealed that garments comprised of fabric bearing
9 the Subject Design were being offered for sale, garments which were manufactured and/or
10 imported under the direction of the Defendants, and each of them.
11 22. None of the aforementioned transactions were authorized by Plaintiff, and all were in
12 violation of Plaintiff's intellectual property rights.

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15 **FIRST CLAIM FOR RELIEF**

16 (For Copyright Infringement – Against all Defendants, and Each)

- 17 23. Plaintiff repeats, re-alleges and incorporates herein by reference as though fully set forth the
18 allegations contained in Paragraphs 1 through 22, inclusive, of this Complaint.
19 24. Plaintiff is informed and believes and thereon alleges that Defendants, and each of them,
20 accessed the Subject Design through, without limitation, the following: (a) access to
21 Plaintiff's design library; (b) access to authorized or unauthorized reproductions in the
22 possession of other vendors and/or DOE Defendants; and (c) access to Plaintiff's strike-offs,
23 swatches, paper CADs and samples.
24 25. Plaintiff is informed and believes and thereon alleges that Defendants, and each of them,
25 infringed Plaintiff's copyright by importing, creating, marketing, advertising, making, and/or
26 developing directly infringing and/or derivative works from the Subject Design and by
27 importing, producing, distributing and/or selling infringing garments through a nationwide
28 network of retail stores, catalogues, and online websites.

- 1 26. Due to Defendants' acts of infringement, Plaintiff has suffered substantial damages to its
2 business in an amount to be established at trial.
- 3 27. Due to Defendants' acts of infringement, Plaintiff has suffered general and special damages
4 to its business in an amount to be established at trial.
- 5 28. Due to Defendants' acts of copyright infringement as alleged herein, Defendants, and each of
6 them, have obtained direct and indirect profits they would not otherwise have realized but for
7 their infringement of the Subject Design. As such, Plaintiff is entitled to disgorgement of
8 Defendants' profits directly and indirectly attributable to Defendants' infringement of the
9 Subject Design in an amount to be established at trial.
- 10 29. Plaintiff is informed and believes and thereon alleges that Defendants, and each of them,
11 have committed acts of infringement alleged herein with actual or constructive knowledge of
12 Plaintiff's rights such that Plaintiff is entitled to a finding of willful infringement.

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15 **SECOND CLAIM FOR RELIEF**

16 (For Vicarious Copyright Infringement – Against All Defendants)

- 17 30. Plaintiff repeats, re-alleges and incorporates herein by reference as though fully set forth the
18 allegations contained in Paragraphs 1 through 29, inclusive, of this Complaint.
- 19 31. Plaintiff is informed and believes and thereon alleges that Defendants, and each of them,
20 knowingly induced, participated in, aided and abetted in and resultantly profited from the
21 illegal reproduction, importation, purchase, marketing, advertisement, distribution and/or
22 sales of product featuring the Subject Design as alleged herein above.
- 23 32. Plaintiff is informed and believes and thereon alleges that Defendants, and each of them, are
24 vicariously liable for the infringement alleged herein because they had the right and ability to
25 supervise the infringing conduct and because they had a direct financial interest in the
26 infringing product.
- 27 33. By reason of the Defendants', and each of their, acts of contributory and/or vicarious
28 infringement as alleged above, Plaintiff has suffered and will continue to suffer substantial

1 damages to its business in an amount to be established at trial, as well as additional general
2 and special damages in an amount to be established at trial.

3 34. Due to Defendants' acts of contributory and/or vicarious copyright infringement as alleged
4 herein, Defendants, and each of them, have obtained direct and indirect profits they would
5 have not otherwise realized but for their infringement of the Subject Design. As such,
6 Plaintiff is entitled to disgorgement of Defendants' profits directly and indirectly attributable
7 to Defendants' infringement of the Subject Design, an amount to be established at trial.

8 35. Plaintiff is informed and believes and thereon alleges that Defendants, and each of them,
9 have committed acts of infringement alleged herein with actual or constructive knowledge of
10 Plaintiff's rights such that Plaintiff is entitled to a finding of willful infringement.

11 **THIRD CLAIM FOR RELIEF**

12 (Contributory Copyright Infringement– Against All Defendants)

13 36. Plaintiff repeats, re-alleges and incorporates herein by reference as though fully set forth the
14 allegations contained hereforeto, inclusive, of this Complaint.

15 37. Plaintiff is informed and believes and thereon alleges that Defendants, and each of them,
16 knowingly induced, caused, materially contributed to, participated in, encourages, aided and
17 abetted in and resultantly profited from the illegal reproduction, importation, purchase,
18 marketing, advertising, distribution and/or sales of product featuring the Subject Design as
19 alleged herein above.

20 38. By reason of the Defendants', and each of their, acts of contributory copyright infringement
21 as alleged above, Plaintiff has suffered and will continue to suffer substantial damages to its
22 business in an amount to be established at trial, as well as additional general and special
23 damages in an amount to be established at trial.

24 39. Due to Defendants' acts of contributory copyright infringement as alleged herein, Defendants,
25 and each of them, have obtained direct and indirect profits they would have not otherwise
26 realized but for their infringement of the Subject Design. As such, Plaintiff is entitled to
27 disgorgement of Defendants' profits directly and indirectly attributable to Defendants'
28 infringement of the Subject Design, an amount to be established at trial.

1 40. Plaintiff is informed and believes and thereon alleges that Defendants, and each of them,
2 have committed acts of infringement alleged herein with actual or constructive knowledge of
3 Plaintiff's rights such that Plaintiff is entitled to a finding of willful infringement.

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6 **PRAYER FOR RELIEF**

7 WHEREFORE, Plaintiff prays for judgment against all Defendants as follows:

8

9 **Against All Defendants**

10 With respect to Each Claim for Relief:

- 11 1. That Defendants, their agents and servants be enjoined from infringing Plaintiff's copyrights
12 in any manner;
- 13 2. That Plaintiff be awarded all profits of Defendants plus all losses of Plaintiff, the exact sum
14 to be proven at time of trial, or, if elected before final judgment, statutory damages as
15 available under the Copyright Act, 17 U.S.C. § 101 *et seq.*;
- 16 3. That Plaintiff be awarded its attorneys' fees as available under the Copyright Act, 17 U.S.C.
17 § 101 *et seq.*;
- 18 4. That Plaintiff be awarded pre-judgment interest as allowed by law;
- 19 5. That Plaintiff be awarded costs of litigation; and
- 20 6. That Plaintiff be awarded such further legal and equitable relief as the Court deems proper.

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22 **DEMAND FOR TRIAL BY JURY**

23 Plaintiff hereby demands a trial by jury in this action pursuant to Federal Rule of Civil Procedure
24 38 and the Seventh Amendment of the Constitution.

25

26 Dated: June 22, 2017

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28 Respectfully submitted,

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2 /s/C. Yong Jeong
3 C. Yong Jeong, Esq.
4 Amy Choe, Esq.
5 John R. Baldivia, Esq.
6 Attorneys for Plaintiff
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